IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajesh Kumar Sharma v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.5205/2003
under Article 226 of the Constitution of India.

Date of Order : 3rd March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Bharat Devashi]
Mr. P.S.Bhati] for the petitioner.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner preferred this writ petition seeking direction for respondents to allow him to fill up application form requisite to face selection proceedings for appointment as Teacher Gr.II or Teacher Gr.III in pursuance of an advertisement issued by Dy. Director (Secondary), Department of Education, Udaipur Zone, Udaipur.

The facts as stated in the petition are that the petitioner possess Master Degree in Science in the subject of mathematics and Bachelor's Degree in Education. The petitioner, therefore, possess requisite educational eligibility to be recruited on the post Teacher Gr.II or Teacher Gr.III. However, he had crossed

the maximum age limit for appointment on the post referred above, therefore, he was not in position to face the selection proceedings.

It is further stated by the petitioner that he acquired qualification of Bachelor's Degree in education in the month of Novermber, 1998 from Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga. After obtaining Bachelor's Degree in education the respondents did not chose to hold selection proceedings uptil issuance of advertisement Anx.5 which was issued in the month of August, 2003. The petitioner became over age in the month of January, 2003, therefore, he was not eligible to face selection proceedings for recruitment as Teacher Gr.II or Teacher Gr.III. If the respondents would have conducted the selection proceedings yearwise then the petitioner would have at least four opportunities to face selection proceedings for recruitment on the post referred above.

The recruitment to the post of Teacher Gr.II and Teacher Gr.III is regulated by the Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter referred to as “the Rules of 1971”). The petitioner has emphasized his claim on basis of Rule 9 of the Rules of 1971 which prescribes that subject to provisions of the Rules the appointing authority shall determine on 1st of April every year the actual number of vacancies occurring during the financial year.

The contention of the counsel for the petitioner is that the appointing authority is mandatorily required to determine exact number of vacancies every year on 1st of April and thereafter to advertise the same to be filled in by way of holding regular selection proceedings as provided under the Rules of 1971. If for any reason the appointing authority fails to hold selection proceedings every year then relaxation in age is required to be given to all those persons who were eligible to face selection proceedings in that specific year but became over age subsequently due to non-holding of selection proceedings.

Division Bench of this Court in the case of Prakash Chandra v. State of Rajasthan and another, (DBCivil Writ Petition No.3710/89, decided on 14.9.1990) at Jaipur Bench, while holding that there was an obligation to make yearwise determination of vacancies for direct recruitment, held that efforts should be made to fill those vacancies during the course of year. The relevant portion of the judgment referred above reads as under:-

> "We are of the view that the vacancies for direct recruitment must also be determined on yearly basis and efforts should be made to fill those vacancies during the course of the year. After determination of vacancies, the same shall be advertised immediately or within reasonable time, so that the candidates who are eligible, can apply. The process of selection may be completed at a subsequent point of time. In that event, the disputes relating to

> eligibility with reference to age and qualifications would be obviated. For the subsequent years, the same very process can be repeated. After the vacancies of different years are advertised the process of selection shall be held separately and penal shall be drawn separately, so that the charge of clubbing the vacancies may also not be levelled against the appointing authority."

In the case of Prakash Chandra (supra) the age relaxation was allowed as admittedly the appointing authority failed to hold selection proceedings for years together though the vacancies for direct recruitment were available in those years and on that account candidates eligible to be appointed rendered over age. In the present case the petitioner has utterly failed to make out any case of inaction/omission or failure on part of the competent authority to hold the selection yearwise. The petitioner nowhere in the petition has stated that while inviting applications from eligible candidates the vacancies of earlier years were available with the respondents. It is further pertinent to note that Rule 9 of the Rules of 1971 cannot be so vigorously applied in the case of direct recruitment as it is having application in the case of promotion. Rule 9 of the Rules of 1971 has been interpreted by Division Bench of this Court in the case of Rajasthan Council of Diploma Engineers v. The State of Rajasthan and another, reported in 1991(2) wLC (Raj.) 597, wherein the Division Bench held as under:-

"We have gone through the language of r.9 again and again and we find that while r.9(1)(a) imposed an obligation on the appointing authority to determine the vacancies occurring during the financial year on 1st of April of every year. So far as the question of vacancies of earlier years are concerned, the rule making authority has not treated the vacancies of promotion quota at par with those meant for direct recruitment. R.9(2) takes care with regard to the vacancies of the earlier years and which are required to be filled by promotion and takes care of a situation in which the vacancies for the earlier years were not determined and filled in the year in which they were required to be filled in and provides that the appointing authority shall also determine the vacancies of earlier years yearwise which were required to be filled in by promotion. It cannot be said that the rule making authority was not aware that such a situation may also crop up in respect of the vacancies meant for direct recruitment and yet the specific provision has been made with regard to the vacancies of the earlier years in respect of the promotion quota and the scheme of the rules is conspicuously silent and makes no such analogous or identical provision with regard to the vacancies of earlier year which may remain unfilled, in the quota of direct recruitment. There being no challenge before us to the validity of r.9 as it stands, we have to consider that even if R.9 is held to be mandatory and even if it is found that the appointing authority failed to comply with the requirement of filling up the vacancies falling in the quota of direct recruitment, in the earlier years whether the principle of holding yearwise selection against the vacancies which were available in the various earlier years on the basis of the eligibility qualifications pertaining to that year should be invoked and applied in the same manner as in the case of such vacancies falling in promotion quota. Having given our thoughtful consideration on this question we find that the rule making authority has not made any provisions with regard to the unfilled vacancies of the earlier years filling in direct recruitment quota as has been done in the case of such vacancies falling in promotion quota despite full awareness of the entire scheme of all rules including the provisions of R.9 and the quota prescribed for direct recruitment and

promotion. It may be observed that the direct recruitment, is held through public service commission, whereas the question of promotion is decided by the departmental promotion committee. No doubt the Public Service Commission is also represented in the Departmental Promotion committee, but in case of the vacancies falling in the quota of direct recruitment the Public Service Commission is the sole recruiting agency and all can be done at the level of the Government is to sent the requisition. Once the requisition is sent it is for the public service commission to complete the process of recruitment and for that purpose neither any time schedule has been prescribed, nor such a time schedule can possible by prescribed as the Public Service Commission has to make recruitment for various services and for various posts. In such a situation unless and until any time schedule is prescribed by rules in which the process of recruitment is to be completed by the Public Service Commission, the requirement of holding yearwise selection cannot be pressed in the matter of appointments by direct recruitment in the same manner as it is applied in the matter of appointments in promotion quota. The language of R.9(1)(c) also contemplates the apportionment of the vacancies determined under cl.(a) of r.9(1) to each such method maintaining the prescribed proportion for the over all number of posts already filled. Thus it is clearly discernible from the scheme of the rules as a whole that, r.9(1) and r.9(2) read with the quota rule, that so far as the number of vacancies falling in the quota of direct recruitment and promotion is concerned, it has to be strictly followed with arithmetical exactitute and in case there are any vacancies of earlier years which could not be filled, the provisions are there to take care of such vacancies falling in promotion quota, but there is no analogous provision with regard to the vacancies of earlier years falling in the quota of direct recruitment if they remained unfilled. In such a situation when we have not been called upon to decide the validity of r.9 as it stands and there is a total absence of any provision with regard to the unfilled vacancies of earlier years falling in direct recruitment quota r.9 even if mandatory we do not find any justification to apply it with the same rigor in the case of the unfilled vacancies of earlier years in the quota of direct recruitment

> as it is to be applied in the case of the vacancies falling under promotion quota."

In view of Division Bench Judgment of this Court in the case of Rajasthan Council of Diploma Engineers (supra) the provisions of Rule 9 of the Rules of 1971 with regard to holding yearwise selection cannot be pressed in the matter of appointments by direct recruitment in the same manner as it is applied in the matter of appointments under promotion quota.

In the instant writ petition while issuing to show cause to the respondents an interim direction was given by the Court to the respondents to permit the petitioner to appear in interview provisionally. Rule 10 of the Rules of 1971 pertains to age for recruitment under the Rules of 1971, according to it a candidate for direct recruitment to a post enumerated in the schedule must have attained the age of 18 years on the first day of January following the last date fixed for the receipt of application and must not have attained the age of 33 years. Under the provisos (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (xii) and (xii) of Rule 10 of the Rules of 1971 certain relaxations are provided in the maximum age limit. All the provisos referred above read as under:-

> "(i)Notwithstanding anything contained contrary in these rules in the case of persons serving in connection with the affairs of the State in substantive

capacity, the upper age-limit shall be 30 years for direct recruitment to post filled in by competitive examinations or in case of posts filled in through the Commission [or Committee by interview as the case may be as provided in the rules elsewhere. This relaxation shall not apply to urgent temporary appointment].

(ii)that the upper age limit mentioned above shall be relaxable by 5 years in the case of women candidates and candidates belonging to the Scheduled Castes or the Scheduled Tribes;

(iii)that the upper age limit mentioned above shall not apply in the case of an ex-prisoner who had served under the Govt. on a substantive basis on any post before conviction and was eligible for appointment under the rules.

(iv)that the upper age limit mentioned above shall be relaxable by a period equal to the term of imprisonment served in the case of an exprisoner who was not overage before his conviction and was eligible for appointment under the rules;

(v)that the person appointed temporarily to a post in the service shall be deemed to be within the age limit had they been within the age limit when they were initially appointed even though they may have crossed the age limit when they appear finally before the Commission and shall be allowed not more than two consecutive chances had they been eligible as such at the time of their initial appointment;

(vi)that the cadet instructors shall be allowed to deduct, from their actual age, the period of service rendered by them in the N.C.C. and if the resultant age does not exceed the maximum age limit prescribed above by more than three years they shall be deemed to be within the prescribed age limit;

[(vii)that for recruitment to the post not within the purview of the Commission the upper age-limit for persons who were retrenched from the State Government Service for want of a vacancy or due to abolition of post shall be 35 years if they were within the age-limit prescribed under these rules, when they were initially appointed to the post from which recruitment relating to qualifications, character, medical fitness etc. are fulfilled and they were not retrenched on account of complaint

or delinquency and the produce a certificate of having rendered good service from the last Appointing Authority.]

[(viii)that there shall be no age-limit in the case of persons repatriated from East African Countries of Kenya, Tanganyika, Uganda and Zanzibar.]

[(ix)that the Released Emergency Commissioned Officers and Short Service Commissioned Officers after release from the Army shall be deemed to be within the age-limit even though they have crossed the age-limit when they appear before the Commission had they been eligible as such at the time of their joining the Commission in the Army.]

(x)deleted

[(xi)that there shall be no age-limit in case of persons repatriated from Pakistan during the year 1971 Indo-Pak war.]

[(xi)that there shall be no age-limit in the case of widows and divorce women.

Explanation.--That in the case of widow, she will have to furnish a certificate of death of her husband from the competent Authority and in the case of divorcee she will have to furnish the proof of divorce.]

[(xii)that where the upper age limit to post/posts is prescribed as 33 years or less in the rules or schedule, as the case may be, it shall be relaxed by 2 years in the case of candidates belonging to the other Backward classes.]"

Rule 38 of the Rules of 1971 empowers the Administrative Department of the Government of Rajasthan to relax the Rules with regard to age in exceptional circumstances. Rule 38 of the Rules of 1971 reads as under:-

"[38.Power to relax rules.--In exceptional cases where the Administrative Department of the Government is satisfied that operation of the rules relating to age or

> regarding requirement of experience for recruitment causes undue hardship in any particular case or where the Government is of the opinion that it is necessary or expedient to relax any of the provisions of these rules with respect to age or experience of any person, it may with the concurrence of the Department of Personnel and Administrative Reforms and in consultation with the Commission by order dispense with or relax the relevant provisions of these rules to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that such relaxation shall not be less favourable than the provision already contained in these rules. Such cases of relaxation shall be referred to the Rajasthan Public Service Commission by the [Administrative Department concerned.]"

From the reading of the provisos of Rule 10 of the Rules of 1971 it is quite clear that under the Rules of 1971 relaxation in maximum age limit is given to the number of categories to the extent that in some of the cases no age limit is prescribed.

In the present case it is a fact admitted that the petitioner became over age in the year 2003 only and no selection proceedings took place for about four years and the petitioner was allowed on provisional basis to face interview by an interim order of this Court. In these circumstances it is a case fit to be considered for grant of age relaxation under Rule 38 of the Rules of 1971.

Looking to these circumstances I consider it appropriate to direct the

Administrative Department of the Government of Rajasthan to consider case of the petitioner in accordance with Rule 38 of the Rules of 1971. The Administrative Department while considering the case of the petitioner for relaxation in maximum age limit shall keep in vision the age relaxation provided under various provisos to Rule 10 of the Rules of 1971 and also the fact that the petitioner faced interview under the interim directions given by this Court.

With these directions the writ petition is disposed of.

No order as to cost.

(GOVIND MATHUR),J.

kkm/ps.